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The Health Disciplines Board



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The Health Disciplines Act creates a new system of regulation for health professionals who are not employed by the government and who are not members of the Ontario Medical Association.

Hearing

These are being written on the basis of advice from the Minister and his vice-chairman. The advice is as follows:

The Lieutenant Governor-in-Council can notwithstanding the Minister of Health and even from within the same office, give different rules of law.

HEALTH DISCIPLINES ACT

The Health Disciplines Act is concerned with five self-governing health disciplines or professions: dentistry, medicine, nursing, optometry and pharmacy. Each discipline has a governing body, or college. Each college has four major committees -- executive, registration, complaints and discipline. Some colleges have additional committees.

Under the Act, at least one (sometimes more) non-professional is appointed along with the professional members to the colleges' councils and to most of the statutory committees.

HEALTH DISCIPLINES BOARD

The Act establishes the Health Disciplines Board whose members are lay people who are not employed by the Government and who are not, and never have been, members of a health discipline.

There are seven members on the Board including a chairman and a vice-chairman. The members are appointed by the Lieutenant Governor-in-Council on recommendation of the Minister of Health and come from across the province and from different walks of life.

It is the responsibility of the Board to ensure that the colleges act reasonably and in the public interest, in their handling of registration of health professionals and complaints.

THE BOARD'S FUNCTIONS:

The Board has two functions:

1. Complaints
2. Registration

COMPLAINTS:

Any member of the public has a right to complain against a member of any of the five health disciplines covered by the Act, that is a medical doctor, a dentist, a nurse, a pharmacist or an optometrist. If you have a complaint, you should write to the registrar of the appropriate college. The registrar will contact you and the member you have complained against and an investigation will be conducted into your complaint.

If the investigation indicates evidence of professional

misconduct on the part of the member warranting it, the matter will be referred directly to the discipline committee of the college for a hearing.

However, if the complaints committee does not refer the matter to the discipline committee, and if either you or the member are not satisfied with the decision, a request may be made for a review by the Health Disciplines Board.

That request must be made within 20 days of receipt of the complaints committee's decision.

When a request for a complaint review is received, the Board will contact the registrar of the relevant college and request that all the written material considered by the complaints committee be sent to the Board. The members of the Board will review that material prior to the review.

In reviewing a decision of a complaints committee, the Board considers whether the committee conducted a proper investigation and reached a reasonable decision.

The complainant, the member complained against and the

appropriate college will be notified of the date, time and location of the review. The college may be present to answer any questions the Board may have about the investigation conducted by the complaints committee and about its decision.

What Happens at a Review

Because this is a review and not a hearing, neither the complainant nor the member are sworn and no stenographic record or transcript is taken, nor is there cross-examination or opening or closing arguments.

At the review, the complainant will be asked to state the complaint. This may be done either personally, by agent (a lawyer or friend) or in writing. The member complained against will be asked to respond to the complaint. Again, this may be done personally, through an agent, or in writing.

Members of the Board may ask the complainant and/or the member questions to clarify the complaint and/or the answer.

Following the conclusion of the review, the Board will put its decision, with reasons, in writing and will mail it to the complainant, the member and the college.

The Board can confirm a decision of a complaints committee, make recommendations to the complaints committee, or require the complaints committee to take whatever action the committee is empowered to take, within the terms of the Act. Where the Board believes it appropriate, it can require the complaints committee to refer the matter to the discipline committee.

The Board cannot consider or make financial awards where damages are sought nor can it recommend or prescribe treatment.

Careful consideration has been given to whether or not meetings held by the Board to review complaints should be open to the public on a regular basis. At first sight, this might seem to be in the public interest. However, the review of complaints in public could invade the privacy of both the complainant and the member. Therefore, the Board holds most of its reviews in closed session.

However, if an open review is requested by one or more of the participants and/or when the Board considers there is substantial reason for a public review, the Board will consider opening the review.

The Board releases all of its decisions to the press usually on a bi-monthly basis. Names of people, places and institutions, etc. are deleted in order to protect the privacy of those appearing before the Board.

REGISTRATION

If a person seeking registration (licensing) in one of the disciplines under the Act (medicine, dentistry, nursing, pharmacy or optometry) disagrees with a decision of a registration committee, that person may request that the Board hold a review or a hearing with respect to the proposed decision of the registration committee. When a registration committee proposes to impose some restriction on an existing licence, the licence holder may also seek a review or hearing.

In registration reviews and hearings, the Board can confirm the decision of the registration committee, make recommendations to the registration committee, or require registration where it finds that the applicant meets the requirements for registration and the committee has

exercised its powers improperly.

Registration Procedures

In a registration review, the Board obtains the material considered by the Registration Committee and reviews the documentation without oral evidence.

After the review, the Board's decision with reasons, is put in writing and sent to the applicant and the college.

In the case of a registration hearing, a Notice of Hearing will be prepared and sent by registered letter or courier to each party. Before the hearing, the registrant or the proposed registrant is entitled to examine any written or documentary material or any report that will be given in evidence at the hearing. The Board's own procedural rules also require the applicant and the college to provide each other with copies of any proposed written exhibits at least 10 days before the hearing.

Parties appearing before the Board should be aware that members of the Board are not allowed to examine the evidence prior to the hearing. Therefore, at the opening of the hearing, members of the Board may take some time to read the material once it has been filed.

Parties are entitled to appear on their own behalf or with counsel or an agent. Parties are expected to present evidence in support of their case and may call witnesses. Anyone giving evidence at a registration hearing is usually required to give that evidence under oath or affirmation and may be subject to cross-examination by the other side and to questions from members of the Board. A court reporter will be present and a transcript of the evidence will be taken. Following the conclusion of the hearing, the Board's decision and reasons will be put in writing and sent to both the appellant and the respondent.

Under the Act, hearings must be held in-camera unless the appellant requests that it be open; this must be done by written request to the Board delivered not later than the day before the hearing. A request to open a registration hearing will be considered by the Board at the beginning of the hearing.

Decisions of the Board made with regard to a registration review or hearing can be appealed to the Supreme Court of Ontario, Divisional Court.

- Copies of the Health Disciplines Act are available from the Ontario Government Bookstore,
880 Bay Street, Toronto, Ontario M7A 1N8,
Tel. (416) 965-2054.
- Inquiries about the Board should be directed to the:

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